

DECISION



THE COMPTROLLER GENERAL
OF THE UNITED STATES
WASHINGTON, D.C. 20548

FILE: B-207001

DATE: July 12, 1982

MATTER OF: Ingersoll-Rand Company, Engineered Pump
Division

DIGEST:

1. Protest is untimely since protest was initially filed with contracting activity before the closing date for receipt of initial proposals and was not filed with GAO within 10 working days after closing occurred.
2. An issue is not significant within the meaning of the significant issue exception to GAO timeliness requirements if it has been considered in prior cases.

The Engineered Pump Division of Ingersoll-Rand Company protests as unduly restrictive an approved product procurement for rotor assemblies under Request for Proposals (RFP) DLA 700-82-R-1367 issued by the Defense Construction Supply Center (DCSC). Ingersoll-Rand says that the designated product, identified as Ram Enterprises Part No. 55-22252-100, originated as an Ingersoll-Rand part, and is the same part with only minor modification.

We dismiss the protest.

Ingersoll-Rand initially filed its protest with the contracting agency, and thus under section 21.2(a) of our Bid Protest Procedures, it was required to file its protest with our Office within 10 working days after it knew or should have known of initial adverse action by the agency. 4 C.F.R. § 21.2(a)(1982). The fact that a closing date passes without being extended is constructive notice that the contracting agency rejects the protest notwithstanding that formal rejection does not occur until later. According to the report filed with our Office by DLA, closing occurred on March 8, 1982. The protest was filed with our Office on April 5, 1982, and therefore is untimely. Bernard Franklin Company, B-207126, May 3, 1982, 82-1 CPD 414.

The protester asks that we consider its protest under the significant issue provision of our Bid Protest Procedures, 4 C.F.R. § 21.2(c), if its protest is found to be untimely. That section provides for consideration of untimely protests where a protest presents an issue which is significant to procurement practice or procedure because it is of widespread interest to the procurement community. CompuServe Data Systems, Inc., 60 Comp. Gen. 469 (1981), 81-1 CPD 374. The question of limiting competition to approved products or sources has been considered in prior cases, e.g., Mercer Products & Manufacturing Co., B-188541, July 25, 1977, 77-2 CPD 45. Previously considered issues are not considered significant within the meaning of the significant issue exception to our timeliness requirements, A.R.&S. Enterprises, Inc., B-197303, July 8, 1980, 80-2 CPD 19.

The protest is dismissed.

Harry R. Van Cleve
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Acting General Counsel